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**JAN 03 2006**

**OFFICE OF PETITIONS**

In re Application of	:	
Fort, et al.	:	DECISION ON PETITION
Application No. 10/827,104	:	
Filed: April 19, 2004	:	
Attorney Docket No. FOCH:002US	:	

This is a decision on the petition to revive pursuant to 37 CFR 1.137(b), filed November 30, 2005.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts, mailed June 28, 2004. This Notice set a period for reply of two months from the mailing date of the Notice to submit the \$770 statutory basic filing fee, the \$130 surcharge for its late filing, an executed oath or declaration, and additional claims fees in the amount of \$1156 (\$688 for 8 independent claims over 3, \$468 for 26 total claims over 20). The total fees due was \$2,056. Applicants were notified that if appropriate, they could file a written assertion of small entity status and pay the small entity fees.

On September 28, 2004, applicants filed a declaration, a one month extension of time, and included a fee payment in the amount of \$1436. Applicants did not include a written assertion of small entity status. Accordingly, the \$1436 submitted was properly applied towards the fees, including the extension of time, as a non-small entity.<sup>1</sup> As \$1436 was not sufficient to cover the fees due as a non-small entity, the Office mailed a Notice of Incomplete Reply on October 22, 2004, informing applicants of the deficiency and that the period for reply would remain as set forth in the Notice to File Missing Parts. No further fees with an appropriate extension of time having been received, the application became abandoned on September 28, 2004. Effective December 8, 2004, the fees for independent claims in excess of three were increased to \$200 (\$100 for a small entity). Applicants filed an amendment cancelling claims (18 total claims, with 6 independent claims), a written assertion of small entity status, and a two month extension of time in the small entity amount (\$225) on September 26, 2005. A Notice of Abandonment was mailed on October 6, 2005.

With the instant petition, petitioner paid the petition fee and made the proper statement of unintentional delay. However, the proper additional claims fees still have not been paid. The application as currently filed contains 3 independent claims in excess of three. The small entity fee for 3 independent claims in excess of three is currently \$300. Applicants have paid an extra \$254 in the application (the extra \$29 submitted on September 28, 2004 that was not applied towards any fees due, and the \$225 fee for the extension of time submitted on September 26, 2005, after the application had already gone abandoned). Accordingly, on renewed petition, applicants must submit the balance of \$46 to cover the 3 independent claims in excess of three (or an amendment cancelling one of the independent claims in excess of three).

Further correspondence with respect to this matter should be addressed as follows:

By mail:                Mail Stop Petitions  
                          Commissioner for Patents  
                          P.O. Box 1450  
                          Alexandria VA 22313-1450

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<sup>1</sup> \$770 basic filing fee, \$130 late surcharge, \$110 one month extension of time, and \$201 for the additional claims, which the Office applied \$172 for 2 independent claims in excess of three, with \$29 left over.

Application No. 10/827,104

Page 3

By FAX: (571)273-8300  
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed  
to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo  
Petitions Attorney  
Office of Petitions